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Supreme Court hears arguments in asbestos lawsuit

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HELENA — The state of Montana "stood mute" while residents and miners in the town of Libby were being exposed to harmful levels of asbestos, an attorney told the state Supreme Court Thursday.

Jon Heberling, who represents nine residents suffering from asbestos-related disease, told justices that the state should have warned miners and residents of the health dangers coming from the W.R. Grace & Co. vermiculite mine in Libby.

A state inspector who visited the mine repeatedly in the 1950s and 1960s reported on the toxicity of the vermiculite dust and concluded that the workers' exposure to it would eventually cause pulmonary disease, Heberling said. That information was never passed on to workers.

"The state stood mute while a human

disaster unfolded in Libby," Heberling told the justices. "The state stood by and kept score. These workers never had a chance because they were never warned."

The nine Libby residents are appealing District Judge Jeffrey Sherlock's August 2001 decision throwing out their lawsuit against the state for failing to warn them about the dangers posed by Grace's vermiculite mine.

Asbestos in the vermiculite ore has been blamed for hundreds of illnesses and at least 200 deaths. The Environmental Protection Agency has been cleaning up the mine site and other contaminated areas in the town since 1999. Libby was declared a Superfund site last October.

Dana Christensen, an attorney for the state, told the justices there is nothing in the law that required the state to warn

workers about its findings. And Christensen said Montana should be immune from the lawsuit because the state had a sovereign immunity law in place when the exposures occurred.

Christensen acknowledged that the law was repealed in the 1972 constitution, but maintained that since most of the asbestos exposure took place in the 1950s and 1960s, Libby residents can't sue.

Heberling countered that the asbestos disease didn't show up in his clients until the 1990s and therefore they could sue.

While the state of Montana didn't say anything to Libby miners about what it was finding in the vermiculite mine, it did inform Grace of its concerns. There was even a confidential meeting at the state Capitol in 1962, Heberling said, in which company officials were asked to explain their actions — or lack thereof — at the

mine.

Yet the state did not require Grace to control the asbestos dust with proper ventilation, or install showers for workers to wash off the dust, or warn workers of the health risks posed by the dust, Heberling said.

Christensen said it was Grace's responsibility to act on the information it had.

Justice John Warner asked Christensen what good the state inspections were if no one was warned about the dangers uncovered.

Christensen replied that there were no statutory requirements saying the state must warn or protect workers and that the plaintiffs were trying to impose on the state duties it simply did not have.

A decision is not expected until later this year.